

§ 512.14

the public within the meaning of this part and may preclude any claim for confidential treatment. The Chief Counsel may notify a submitter of information or, if applicable, a third party from whom the information was obtained, of inadequacies regarding a claim for confidential treatment and may allow the submitter or third party additional time to supplement the submission, but has no obligation to provide either notice or additional time.

(b) If the submitter does not provide the certificate required under § 512.4(b) of this part or any supporting information required under § 512.4(c) of this part, or if the information is insufficient to establish that the information should be afforded confidential treatment under the confidentiality standards set out in § 512.15 of this part, a request that such information be treated confidentially may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information and may allow the submitter additional time to supplement the showing, but has no obligation to provide either notice or additional time.

Subpart D—Agency Determination

§ 512.14 Who makes the confidentiality determination?

The Chief Counsel will determine whether an item of information will be afforded confidential treatment under this part.

§ 512.15 How will confidentiality determinations be made?

Information may be afforded confidential treatment if the Chief Counsel determines that:

- (a) The information is a trade secret;
- (b) Public disclosure of the information would be likely to cause substantial harm to the competitive position of the submitter;
- (c) Public disclosure of the information would be likely to impair NHTSA's ability to obtain necessary information in the future;
- (d) The information was provided to NHTSA voluntarily and was not customarily released to the public by the person from whom it was obtained; or

49 CFR Ch. V (10–1–06 Edition)

(e) The information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b).

§ 512.16 Class determinations.

(a) The Chief Counsel may issue class determinations of categories of information to be entitled to confidential treatment if the Chief Counsel determines that one or more characteristics common to each item of information in that class, will, in most cases, result in identical treatment, and further that it is appropriate to treat all such items as a class for one or more purposes under this part. Once a class determination is made, the Chief Counsel will publish the new class determination in the FEDERAL REGISTER.

(b) The Chief Counsel may amend, modify, or terminate any class determination established under this section. These changes will be published in the FEDERAL REGISTER.

(c) Class determinations made by the Chief Counsel are listed in Appendices B and C to this Part.

(d) A class determination may state that all of the information in the class:

- (1) Is or is not governed by a particular section of this part or by a particular set of substantive criteria of this part;
- (2) Satisfies one or more of the applicable substantive criteria; or
- (3) Satisfies one or more of the substantive criteria, but only for a certain period of time.

§ 512.17 How long should it take to determine whether information is entitled to confidential treatment?

(a) When information claimed to be confidential is requested under the Freedom of Information Act, the determination will be made within twenty (20) working days after NHTSA receives such a request or within thirty (30) working days in unusual circumstances as provided under 5 U.S.C. 552(a)(6)(A). However, these time periods may be extended by the Chief Counsel for good cause shown or on request from any person. An extension will be made in accordance with 5 U.S.C. 552(a)(6)(A), and will be accompanied by a written statement setting out the reasons for the extension.

(b) When information claimed to be confidential is not requested under the Freedom of Information Act, the determination of confidentiality will be made within a reasonable period of time, at the discretion of the Chief Counsel.

§ 512.18 How will I be notified of the confidentiality determination?

(a) If a request for confidential treatment is granted, the submitter of the information will be notified in writing of the determination and of any appropriate limitations.

(b) If a request for confidential treatment is denied in whole or in part, the submitter of the information will be notified in writing of the determination, and the reasons for the denial, by certified mail, return receipt requested. The information may be made available to the public twenty (20) working days after the submitter of the information has received notice of the denial, unless a request for reconsideration is filed. The information may be released publicly on an earlier date, if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such date.

§ 512.19 What can I do if I disagree with the determination?

(a) A submitter of information whose request for confidential treatment is denied in whole or in part, may petition for reconsideration of that decision. Petitions for reconsideration shall be addressed to and received by the Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If a person is unable to submit a petition for reconsideration within twenty (20) working days of receiving notice that a claim for confidential treatment was denied, that person may submit a request for an extension of time. The Chief Counsel must receive any request for an extension of time before the date on which the information would be made available to the public, and the request must be accompanied by an explanation describing

the reason for the request and the length of time requested. The Chief Counsel will determine whether to grant or deny the extension and the length of the extension.

(c) If a petition for reconsideration is granted, the petitioner will be notified in writing of the determination and of any appropriate limitations.

(d) If a petition for reconsideration is denied in whole or in part, or if a request for an extension is denied, the petitioner will be notified in writing of the denial, and the reasons for the denial, and will be informed that the information will be made available to the public not less than twenty (20) working days after the petitioner has received notice of the denial. The information may be released publicly on an earlier date, if the Administrator determines in writing that the public interest requires that the information be made available to the public on such date.

Subpart E—Agency Treatment of Information Claimed To Be Confidential

§ 512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?

(a) Information received by NHTSA, for which a properly filed confidentiality request is submitted, will be kept confidential until the Chief Counsel makes a determination regarding its confidentiality. Such information will not be disclosed publicly, except in accordance with this part.

(b) Redacted copies of documents submitted to NHTSA under this part will be disclosed to the public.

§ 512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?

(a) Once the Chief Counsel makes a determination regarding the confidentiality of the submitted information, all materials determined not to be entitled to confidential protection will be disclosed to the public in accordance with the determination, unless a timely petition for reconsideration is received by the agency.